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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,825	03/15/2004	John A. Klein	P-2344.79	1392
30553	7590	11/23/2005		
GUNN, LEE & HANOR 700 N. ST. MARY'S STREET SUITE 1500 SAN ANTONIO, TX 78205			EXAMINER TORRES, ALICIA M	
			ART UNIT 3671	PAPER NUMBER

DATE MAILED: 11/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/800,825

Applicant(s) .

KLEIN ET AL.

Examiner

Alicia M. Torres

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Objections

1. Claims 1 and 5 are objected to because of the following informalities: there is an inconsistency regarding the skirts and of which deck wall they are attached. From the drawings and the specification, it appears the skid shoes are attached to the sides of the lower deck wall. However, in claim 5, the skid shoes are attached to the skirts of the upper deck wall. Appropriate correction is required.

DETAILED ACTION

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-7 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Zenner 4,930,298 in view of Cody et al. 3,877,206.

Zenner discloses a mower deck comprising:

- An upper deck wall (54a, Fig. 5) having
 - A raised portion sloping downward in all directions
 - A left skirt and a right skirt attached to the left and right ends having an apex at their upper corners comprising
 - A skid shoe (unnumbered, see Fig. 5)
 - A way of exposing the frame member (see the dashed lines of Fig. 3)

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- A lower deck wall (at 28a, see Fig. 5) affixed to the upper deck wall at the outer perimeter
- A front cross member (the front edges of the deck walls) attached where the upper and lower deck walls meet and bounded by the left and right skirts
- A rear cross member (at the rear edges of the deck walls) attached where the upper and lower deck walls meet having j-shaped pieces (unnumbered piece shown between reference numbers 66a and 71b in Fig. 5) perpendicular and partially overlapping the rear cross member
- A frame member (71b in Fig. 5) comprising right, middle and left frame sections (middle and left section are not shown) centrally positioned between the upper and lower deck walls, parallel to the rear wall member
- A left channel member (not shown) positioned perpendicular to the cross members and located between the middle and left frame sections
- A right channel member (unnumbered pivot tube in Fig. 5) positioned perpendicular to the cross members and located between the middle and right frame sections
- A hitch assembly (at 24) attached to the channel members and, perpendicularly to, the front cross member

However, Zenner fails to disclose wherein the right and left ends of the upper deck wall curve down in a smooth radius.

Cody discloses a lawn mower having rounded edges (16).

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the round the edges on the deck of Zenner in order to provide a pleasing appearance and to prevent injuries to an operator that may come from sharp edges.

4. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zenner in view of Friesen 6,052,980, as cited by Applicant.

5. Regarding claim 8, Zenner discloses a deck for mowers comprising:

- an upper deck wall (54a, 50, 50b)
- a lower deck wall (26, 28, 34)
- a front cross member (28a)
- a rear cross member (unnumbered)
- left and right skirts positioned beneath the deck walls
- A frame member (71b in Fig. 5) comprising right, middle and left frame sections (middle and left section are not shown) centrally positioned between the upper and lower deck walls, parallel to the rear wall member
- A left channel member (not shown) positioned perpendicular to the cross members and located between the middle and left frame sections
- A right channel member (unnumbered pivot tube in Fig. 5) positioned perpendicular to the cross members and located between the middle and right frame sections

the upper deck wall (54a, 50, 50b) comprising

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- a horizontal segment with a length parallel to said rear cross member and having a front and rear side
- a first sloping section sloping downward from the rear side of said horizontal segment to said rear cross member
- a second sloping section sloping downward from the front side of said horizontal segment to said front cross member
- a first sloping end sloping downward from a first end of said horizontal segment to a first left-sided lip
- a second sloping end sloping downward from a second end of said horizontal segment to a second right-side lip
- at least two sloping diagonal sections sloping diagonally to the front lips.

Zenner fails to disclose the sloping diagonal sections sloping diagonally from said horizontal segment to said rear lips.

Freisen discloses a similar mower deck including a set of rear sloping diagonal sections used to connect the upper and lower decks and sloped so as to provide torsional rigidity.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the sloping rear sections as taught by Freisen on the deck of Zenner in order provide the deck with supplemental structural rigidity.

6. Regarding claim 9, Zenner discloses a deck for mowers comprising:

- an upper section (54a, 50, 54b)
- a central section (50)

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- a lower section (26, 28, 34)
- a front cross member (28a)
- a rear cross member (unnumbered)
- a first skirt and a second skirt (both unnumbered) positioned to opposing sides and beneath said upper section and said lower section
- A frame member (71b in Fig. 5) comprising right, middle and left frame sections (middle and left section are not shown) centrally positioned between the upper and lower deck walls, parallel to the rear wall member
- A left channel member (not shown) positioned perpendicular to the cross members and located between the middle and left frame sections
- A right channel member (unnumbered pivot tube in Fig. 5) positioned perpendicular to the cross members and located between the middle and right frame sections

wherein said central section comprises:

- a horizontal segment with a length parallel to said rear cross member
- a first sloping end sloping downward from a first end of said horizontal segment to a first lip positioned adjacent said first skirt
- a second sloping end sloping downward from a second end of said horizontal segment to a second lip

wherein said upper section comprises:

- a first sloping section sloping downward from said rear side of said horizontal segment to said rear cross member

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- a second sloping section sloping downward from said front side of said horizontal segment to said front cross member
- at least two sloping diagonal sections sloping diagonally from said horizontal segment to said front lips.

Zenner fails to disclose at least two sloping diagonal sections sloping diagonally from said horizontal segment to the rear lips.

Freisen discloses a similar mower deck including a set of rear sloping diagonal sections used to connect the upper and lower decks and sloped so as to provide torsional rigidity.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the sloping rear sections as taught by Freisen on the deck of Zenner in order provide the deck with supplemental structural rigidity.

Response to Arguments

7. In response to applicant's argument that Zenner US 4,930,298 is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Zenner is both in the field of the applicant's endeavor (the class of "Harvesters") and, furthermore, even solves a problem pertinent to the particular problem with which the applicant is concerned (rounded versus sharp corners). It appears the applicant is mistaken about how the Patent Office treats or considers "art".

In response to applicant's argument that there is no need to combine the references of Zenner and Cody, the fact that applicant has recognized another advantage (i.e. to improve aesthetics and safety) which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

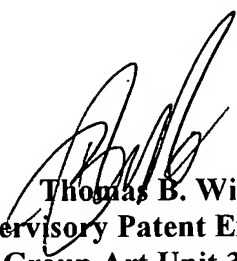
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia M. Torres whose telephone number is 571-272-6997. The examiner can normally be reached Monday through Thursday from 7:00 a.m. – 4:30 p.m.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at 571-272-6998.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is 703-305-1113. The fax number for this Group is 571-273-8300.



Thomas B. Will
Supervisory Patent Examiner
Group Art Unit 3671

AMT
November 17, 2005